

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
ANDREE LAYTON ROAF, Judge

DIVISION III

CACR05-507

June 28, 2006

HAROLD E. MERRIWEATHER
APPELLANT
v.

APPEAL FROM SEBASTIAN COUNTY
CIRCUIT COURT
[NO. CR-96-927 & 98-867]

STATE OF ARKANSAS
APPELLEE

HONORABLE J. MICHAEL FITZHUGH,
CIRCUIT JUDGE

REBRIEFING ORDERED

On July 1, 1997, appellant Harold Merriweather was convicted of robbery, a Class B felony, and was sentenced to forty-two months' imprisonment and 138 months' suspended sentence. On May 28, 1999, the trial court revoked Merriweather's suspended sentence and sentenced him to forty-eight months' imprisonment with a suspended sentence of seventy-four months. On June 9, 1999, in a second criminal case, Merriweather was convicted of possession of drug paraphernalia and possession of cocaine. He was sentenced to forty-eight months' imprisonment with a suspended sentence of seventy-two months on each count to run concurrently with his other sentences.

In a petition filed on November 23, 2004, the State alleged that Merriweather committed several offenses justifying revocation. After a hearing, the trial court revoked Merriweather's suspended sentences, sentencing him to 150 months' imprisonment for the robbery conviction and

two suspended sentences of seventy-two months for the possession-of-drug-paraphernalia and possession-of-cocaine convictions.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j) of the Rules of the Arkansas Supreme Court and Court of Appeals, Merriweather's counsel has filed a motion to withdraw on the grounds that the appeal is without merit. The motion was accompanied by a brief purportedly referring to everything in the record that might arguably support an appeal. Merriweather was provided with a copy of his counsel's brief and notified of his right to file a list of points for reversal within thirty days. He did not respond. Because appellant's counsel failed to discuss the sufficiency of the evidence to support the revocation, this court must order rebriefing.

Merriweather's counsel discussed one adverse ruling at the revocation hearing regarding Merriweather's request for a continuance so that he could obtain new counsel. Merriweather's counsel has failed to address the decision to revoke Merriweather's suspended sentence. The decision to revoke is an adverse ruling that must be addressed by counsel in an *Anders* brief. *Brown v. State*, 85 Ark. App. 382, 155 S.W.3d 22 (2004). Merriweather's trial counsel made no motion for dismissal during the revocation proceeding; however, the supreme court has held that a defendant in a revocation proceeding is not required to comply with Ark. R. Crim. P. 33.1 regarding motions for directed verdict or dismissal in order to preserve the issue of the sufficiency of the evidence. *Barbee v. State*, 346 Ark. 185, 56 S.W.3d 370 (2001). The question of the sufficiency of the evidence to support the revocation therefore remains a viable argument on appeal, and Merriweather's counsel did not address this argument in the brief. Thus, we direct Merriweather's counsel to file a new brief, setting forth the State's evidence and explaining its sufficiency for the revocation of Merriweather's suspended sentence.

Rebriefing ordered. Counsel is given thirty days to rebrief.

GLOVER and NEAL, JJ., agree.